Court File No. CL-00000219-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NUNAVUT IRON ORE, INC., BAFFINLAND IRON MINES CORPORATION AND 12334992 CANADA INC.

Factum of Oaktree Capital Management, L.P. and Hartree Partners, LP (Cross-Motion Returnable June 5, 2026)

June 5, 2026

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Daniel S. Murdoch (LSO #53123L)
Tel: 416-869-5529
Email: dmurdoch@stikeman.com

Maria Konyukhova (LSO #52880V)
Tel: 416-869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #82084O)
Tel: 416-869-5593
Email: pyang@stikeman.com

Brittney Ketwaroo (LSO #89781K)
Tel: 416-869-5524
Email: bketwaroo@stikeman.com

Counsel for Oaktree Capital Management, L.P. and Hartree Partners, LP

TO: SERVICE LIST

OVERVIEW[1]

1. Oaktree Capital Management, L.P. and Hartree Partners, LP (together, the "**First Secured Lenders**") are the first-ranking secured creditors of Baffinland Iron Mines LP ("**BIM LP**") and Baffinland Iron Mines Corporation ("**BIM Corp.**", and together with BIM LP, "**BIM**"). Only six months ago, in November 2025, the First Secured Creditors provided the Company with essential liquidity by advancing to the Company $183 million[2] pursuant to the Credit Facility.

2. Together, the First Secured Lenders and the holders of the 8.750% senior secured notes issued by BIM Corp. (the "**Notes**" and the "**Senior Secured Noteholders**") represent over $750 million of the Company's secured debt. The First Secured Lenders and the ad hoc committee of Senior Secured Noteholders[3] (the "**Ad Hoc Committee**" and together, the "**Senior Secured Lenders**") are united in their opposition to this motion.

3. The First Secured Lenders have acted in good faith in their dealings with the Company by advancing critical liquidity to sustain operations, entering into ancillary service agreements, and twice granting limited waivers when the Company defaulted, all while refraining from exercising their enforcement rights.

4. The Company is now asking this Court to 'prime' the Senior Secured Lenders with a DIP facility (the "**Proposed Priming DIP**") that will be entitled to a super-priority charge in the amount of up to $475 million over the Company's assets. This request is made having provided the Senior Secured Lenders a copy of the Proposed Priming DIP term sheet a mere 36 hours before the hearing to approve it and *in lieu* of pursuing a DIP proposal submitted by the Senior Secured Lenders (the "**Senior Secured DIP**") that is on comparable terms and which the Monitor

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[2] All funds in USD.
[3] The Ad Hoc Committee represent over 70% of the Senior Secured Noteholders.

acknowledges is viable.

5. The Senior Secured Lenders respectfully submit that the only tenable course is for this Court to grant an Order: (a) adjourning the Applicants' motion for approval of the Proposed Priming DIP currently scheduled for June 5, 2026; (b) approving the Interim Bridge DIP proposed by the Senior Secured Lenders; and (c) approving a litigation timetable for a hearing of the Company's motion to approve the Proposed Priming DIP.

6. Courts have repeatedly recognized that significant caution must be exercised before ordering priority for a DIP charge over the objections of a secured creditor.[4] To properly perform its "gatekeeper" role in ensuring that any DIP financing is reasonable and appropriate, this Court must have a full and accurate record and adequate time to consider the relief being sought and the prejudice it may cause. As stated in *Great Basin*, courts considering interim financing must be wary of being rushed to make decisions in the face of "manufactured" urgencies.[5]

7. The Senior Secured Lenders have had less than 36 hours to receive, review and consider the proposed relief. The Company and the Monitor have not engaged with the First Secured Lenders on their views and position on the Proposed Priming DIP and have not sought to canvass or resolve their concerns.

8. Courts have also repeatedly recognized that where the existing lender is prepared to provide DIP financing on comparable terms, even where such proposal did not match the precise terms of the bid approved by a CCAA monitor, the existing lender should be granted priority to provide such DIP financing. These decisions are grounded by the principle that the parties with the most at stake, and whose security is being displaced, deserve preference when they are

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[4] *Temple City Housing Inc., (Companies' Creditors Arrangement Act)*, 2007 ABQB 786 [*Temple City*] at para. 14.
[5] *Re Great Basin Gold* Ltd., 2012 BCSC 1459 [*Re Great Basin*] at para. 182.

prepared to fund the CCAA debtor company on similar terms.

9. Export Development Canada ("**EDC**"), which the Company has attempted to cast as having a similar position in the capital stack as the other secured lenders, holds a mere $75 million dollars of secured debt (relative to the over $750M held by the Senior Secured Lenders) and ranks below the First Secured Lenders and *pari passu* with the Senior Secured Noteholders.

10. No CCAA court has ever approved, on 36 hours' notice, an alternative DIP facility that primed existing lenders that put forward their own viable and comparable proposal. An approval of the EDC DIP would be extraordinary, unprecedented, unnecessary and unjustified. The unprecedented scale of the Company's motion is exacerbated by the fact that this would be one of the largest CCAA DIP facilities ever approved by a CCAA court. An interim bridge DIP sized at US$110 million would be, by far, the largest interim bridge DIP ever considered and would be, excluding two distinguishable outliers[6], one of the largest *full* CCAA DIP facilities approved by a CCAA court in the past five years.

11. The Senior Secured DIP would provide stability and certainty of funding for the Company and all stakeholders, including employees, trade creditors, and operational counterparties, while affording parties their due process rights. It carries no fees if repaid from a replacement DIP facility within 60 days, and, in stark contrast to the EDC DIP, does not do violence to the *status quo*. The approval of the Senior Secured DIP would be consistent with this Court's approach in prior cases approving interim bridge financing that preserves the *status quo* while ordering structured litigation timetables or longer DIP solicitation processes rather than rushing to approve contested DIP

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[6] The two distinguishable outliers include one instance where there was a larger DIP facility approved in a Part IV recognition proceeding of a Chapter 11 proceeding in the United States - *Revlon, Inc. et al*, (June 20, 2022), Ontario Superior Court of Justice [Commercial List], Court File No. CV-22-00682880-00CL, (Supplemental Order (Foreign Main Proceeding)) and one larger DIP facility approved in the context of a receivership which transitioned into a CCAA proceeding where pre-receivership management was effectively ousted from any decision making role - *Mizrahi Development Group (The One)*, (April 22, 2025), Ontario Superior Court of Justice [Commercial List] Court File No. CV-25-00740512-00CL, (Initial Order).

facilities on a compressed timeline that prejudice existing priority secured creditors.

LAW & ARGUMENT

A. The Court Should Adjourn the Applicants' Motion for Approval of the Proposed Priming DIP and set a Litigation Timetable for Same

12. The appropriate course of action today is to adjourn the Applicants' motion for approval of the Proposed Priming DIP.

i. Approval of DIP Financing Requires Scrutiny and Should Not Be Rushed

13. A CCAA Court considering interim financing must be wary of being rushed to make decisions in the face of "manufactured" urgency.[7] The Company's motion for approval of the Proposed Priming DIP is in direct opposition to established authority.

14. In *Temple City,* the Court stated that "it is also undoubtedly true that, since DIP financing may erode the security of creditors, the Court should be cautious in exercising its inherent jurisdiction to order priority for a DIP Charge over the objection of a secured creditor."[8]

15. Courts must "scrutinize" any interim financing proposals to ensure that they are "reasonable and appropriate in the circumstances" and that they "do not inappropriately advantage one party over another to the detriment of that party and the stakeholders generally."[9] Such scrutiny is necessary because stakeholders may use their existing leverage to secure advantages for themselves at the expense of other stakeholders which, once approved by court order, cannot be revisited. The court "must be constantly vigilant against such strategies."[10]

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[7] *Re Great Basin* at para. 179
[8] *Temple City* at para. 14
[9] *Re Fire & Flower Holdings Corp.*, 2023 ONSC 4048 [*Fire and Flower*] at para. 40, citing *Re Great Basin*; see also *Quest University Canada (Re),* 2020 BCSC 318 at para. 97.
[10] *Re Great Basin* at para. 179.

16. For the court to properly perform its "gatekeeper" role in ensuring that any agreement proposed by stakeholders seeking to gain an advantage is reasonable and appropriate in the circumstances, it is critical that the court have evidence of the underlying reason for the transaction, the due diligence performed and negotiations undertaken, the consequences of not obtaining the relief, and the alternatives available.[11]

17. As the British Columbia Supreme Court stated in *Great Basin*:

> … the court must be vigilant to ensure that it is not rushed to a decision based on an illusory sense of urgency which is not supported by the evidence. … The court must guard against deciding issues in the face of "manufactured" urgency, whether created by leverage from a stakeholder seeking certain relief or otherwise.[12]

ii. CCAA Proceedings Must Have at Least a Semblance of Procedural Fairness and the Proposed Approval of the Proposed Priming DIP has no Semblance of Fairness

18. Despite the pressures of "real-time litigation" that mark insolvency proceedings, the DIP solicitation process followed by the Company and Monitor is without precedent. Principles of procedural fairness cannot be ignored. The Supreme Court of Canada observed in *Century Services* that "Court should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit."[13]

19. Similarly, in *Port Capital Development (EV) Inc. (Re)* the court affirmed that procedural fairness is an important aspect of any CCAA proceeding.[14] In *Target Canada Co., Re*, the court also stated that it is incumbent upon the court, in its supervisory role, to ensure that the CCAA

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[11] *Re Great Basin* at para. 181.
[12] *Re Great Basin* at para. 182
[13] *Century Services Inc. v. Canada (Attorney General),* 2010 SCC 60 at para. 70, as cited in *Re Crystallex,* 2012 ONCA 404 [*Crystallex*] at para. 63 and *Re Great Basin* at para. 12.
[14] *Port Capital Development (EV) Inc. (Re)* 2022 BCSC 1655 at para. 65.

process unfolds in a fair and transparent manner.[15]

20. The proposed approval of the Proposed Priming DIP lacks any semblance of procedural fairness. The First Secured Lenders have effectively been provided no time to respond and an insufficient record upon which to do so. The First Secured Lenders received the Applicants' motion materials less than 36 hours before the scheduled hearing, without any opportunity to conduct cross-examinations or file proper and comprehensive responding evidence.

iii. The Funding Urgency is Entirely Manufactured by the Company's Actions and Decisions

21. The fact that there is any urgency to this motion is a result entirely of the Company's own decisions and militates in favour of an adjournment to allow the parties and the Court to consider and weigh the significant issues on this motion.

22. The DIP solicitation process that the Applicants now ask this Court to sanction could and should have been initiated in a formal manner prior to the commencement of these CCAA proceedings. Instead, the Applicants elected to seek CCAA protection without engaging in a meaningful way with its stakeholders, including the Senior Secured Lenders, about DIP financing on realistic timelines for its cash needs, thereafter compressing what ought to have been a measured and transparent process into an unreasonably abbreviated two-week post-filing period.

23. The Company then dragged out their review and consideration of the proposed DIP term sheets, thereby rendering today's "urgent" hearing inevitable. Although the Senior Secured Lenders submitted binding DIP proposals on May 25, 2026, the Applicants and the Monitor only sent a bespoke issues list on May 27, 2026, requesting responses by 3:00 p.m. that same day. Upon submitting the responses to the issues list, the Company did not respond to the Senior

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[15] *Target Canada Co.*, Re 2016 ONSC 316 at para. 72.

Secured Lenders until the evening of May 28, at which point it demanded a revised proposal within 48 hours while refusing to negotiate any terms. The Senior Secured Lenders submitted their revised binding term sheet on May 30, 2026, and expressly invited the Company and the Monitor to engage with the Senior Secured Lenders on terms that the Company previously gave unclear feedback on. The Senior Secured Lenders abided by all the arbitrary and shifting deadlines imposed by the Company and the Monitor (with the exception of a 2-hour delay in submitting their revised DIP on Saturday, May 30). The Company and the Monitor then went silent. As of June 1 — past the deadline by which the Monitor had committed to resolve a litigation timetable — the First Secured Lenders had received no motion materials, no indication of what relief would be sought, and no communication from the Company or the Monitor. On the evening of June 1, the hearing was unilaterally rescheduled from June 3 to June 5. The First Secured Lenders were not informed until the afternoon of June 2 that EDC had been selected as the DIP lender.

24. The Applicants now ask this Court to approve a priming DIP facility of a magnitude and on a timeline that are both unprecedented, while the First Secured Lenders — the parties whose security is being displaced — are afforded no time to respond. The Court should not permit the Company to rely on its self-created urgency to materially prejudice the First Secured Lenders without any respect for their due process rights.

iv. The DIP Solicitation Process Was Flawed and Material Questions Remain about the Independence of the Decision Makers

25. The DIP solicitation process was fundamentally flawed. In addition to the prejudice created by the timing and shifting deadlines raised above, there are serious concerns about the Company's engagement with some but not all of the bidders equally. The Proposed Priming DIP is for a substantially higher amount than requested and the Company demonstrated a complete

lack of engagement with the Senior Secured Lenders about the terms of their DIP even though the Senior Secured Lenders advised that they would gladly engage on these issues.

26. Material questions also remain about the independence of the Company's decision makers in selecting the Proposed Priming DIP. The First Secured Lenders have raised significant concerns about governance in the DIP selection process and whether individuals with interests in related offtake arrangements properly recused themselves from the selection process. The First Secured Lenders have asked what steps were taken to ensure that the DIP selection process was conducted at arm's length and free from influence by conflicted parties, including whether any independent committee of the board was struck and whether independent legal or financial advice was obtained. All of these questions remain unanswered.

27. The concerns about independence are compounded by the fact that the Proposed Priming DIP appears to contemplate the continuation of significant related party payments during the CCAA proceedings. These include payments on iron ore offtake agreements and royalty agreements. The First Secured Lenders have asked for benchmarking, market comparison, or independent assessment to determine whether each of these arrangements reflects fair market value and arm's length terms, and whether the continuation of these payments during the CCAA proceedings is in the best interests of the estate and its stakeholders as a whole. The Company and the Monitor have not provided any such analysis or addressed these concerns.

v. The Proposed Priming DIP Will Cause Material Prejudice to the Senior Secured Lenders Even on an Interim Basis

28. First, the Proposed Priming DIP is not a standalone interim bridge facility — it is a $475 million full-term DIP facility with a 12-month maturity (extendable by six months for a further 1% fee), of which $110 million is available as a "Bridge Advance" during the first four weeks. Approval of the Bridge Advance is expressly conditioned on approval of the full DIP Facility. As indicated in the Applicants' materials "*the bridge funding of $110 million is only guaranteed if the Court*

approves the full DIP Facility."[16] Accordingly, the Court is being asked to approve not merely interim bridge financing, but a super-priority DIP charge of up to $475 million — representing the largest contested priming DIP facility ever sought in Canadian CCAA proceedings — on less than 36 hours' notice. In direct contrast, the Senior Secured Lenders have proposed a separate Interim Bridge DIP that is not conditional on approval of their full DIP proposal.

29. Second, the Proposed Priming DIP contains a no-solicitation provision during the four-week Bridge Period. The term sheet provides that "*the Borrowers hereby confirm that during the Bridge Period no alternative proposals for interim financing will be solicited or accepted by the Borrowers.*"[17] If the full Proposed Priming DIP is approved, the Company will be contractually prohibited from considering any alternative financing proposals — including the Senior Secured DIP — during the very period in which a contested hearing should be occurring. This approach directly contradicts the process contemplated in the endorsement of Justice Conway when she scheduled this hearing.

30. As a result of these terms intended to circumvent the Company's ability to procure any alternative financing, approval of the Proposed Priming DIP, even on an interim basis, would result in significant and potentially irreversible prejudice to the First Secured Lenders and other stakeholders.

31. Third, the First Secured Lenders are concerned about the nature and level of spending permitted during the Bridge Period. The Proposed Priming DIP permits spending during the four-week Bridge Period of up to $110 million in accordance with the Approved Cash Flow. The 13-week cash flow forecast attached as Exhibit E to the van Tonder Affidavit projects net cash

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[16] Affidavit of Celeste van Tonder sworn June 3, 2026 (the "**van Tonder Affidavit**") at para 90 in the Applicants Motion Record dated June 3, 2026 ("**AMR**"), at Tab 2.
[17] See Export Development Canada DIP Facility Loan Agreement dated June 3, 2026, in the van Tonder Affidavit at Exhibit H, AMR at Tab 2H.

requirements of approximately $184 million, including $71 million in sealift purchases, $35 million in labour costs, $58 million in vendor payments, and $20 million in sustaining capital costs.[18] During the Bridge Period alone, the Company contemplates drawing $110 million to fund these expenditures and making binding commitments to suppliers, including substantial sealift procurement obligations that, once entered into, will be irrevocable. All of these obligations will be entered into without consultation with the First Secured Lenders if the Proposed Priming DIP is approved.

32. Fourth, the First Secured Lenders are further concerned about the Company's ability to enter into material contracts during the Bridge Period that will require major spending commitments beyond the first four weeks. The Proposed Priming DIP budget contemplates significant capital expenditures towards the Steensby Expansion project (with spending on exploration and expansion capped only at $10 million and $20 million, respectively, before requiring DIP Lender consent), continuation of substantial payments to related parties and insiders (including the ArcelorMittal offtake discount, Royalty Agreement payments, and EMG Operator fees), and binding sealift procurement commitments that will lock the estate into tens of millions of dollars in obligations that extend well beyond the Bridge Period. If the Proposed Priming DIP is approved even on an interim basis, the estate will be committed to expenditures and contractual obligations that cannot be unwound — regardless of the outcome of any subsequent contested hearing on the full DIP.

B. The Court Should Approve the Senior Secured DIP

i. The Senior Secured Lenders Should be Preferred to Provide DIP Financing

33. In *Crystallex*, Justice Newbould confirmed that where the existing lender of a debtor

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[18] Cash Flow Report attached as Exhibit E to the van Tonder Affidavit.

company provides DIP financing on comparable terms, even where that proposal was not made within the precise terms of any bid process approved by a CCAA monitor, the existing lender should be granted priority to provide such DIP financing.[19] Similarly, in *Temple City,* the Court stated that "it is also undoubtedly true that, since DIP financing may erode the security of creditors, the Court should be cautious in exercising its inherent jurisdiction to order priority for a DIP Charge over the objection of a secured creditor."[20]

34. The principle underlying both *Temple City* and *Crystallex* is that the parties with the most at stake, and whose security is being displaced, deserve preference where they are prepared to fund the CCAA debtor company on similar terms.

35. EDC is not similarly situated to the First Secured Lenders. EDC holds a mere $75 million in secured debt — less than half of the $183 million held by the First Secured Lenders — and ranks subordinate to the First Secured Lenders, and only *pari passu* with the Senior Secured Noteholders who are owed $575 million. The Senior Secured Lenders, not EDC, bear the direct economic consequences of any erosion in the Company's value. Each dollar of value lost is a dollar that would otherwise be available to satisfy the secured obligations owed to the Senior Secured Lenders — obligations that EDC's proposed priming DIP would displace.

36. There has never been a CCAA where existing lenders have been primed by an alternative DIP facility (including one advanced by a junior creditor) in circumstances where the terms of the two competing proposals were comparable. In the cases where priming has been approved, such as *Tacora Resources Inc.*[21] and *Crystallex*, the terms of the priming DIP were clearly superior to those offered by the existing secured lenders in multiple respects.[22] Moreover, in both of those

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[19] *Re Crystallex International Corporation*, 2012 ONSC 2125 at para. 91. [*Crystallex*]
[20] *Temple City* at para. 14.
[21] *Tacora Resources Inc. (Re*), 2023 ONSC 6126 [*Tacora*]; *Crystallex* at para. 91.
[22] See *Crystallex* and *Tacora*.

cases, the existing lenders refused to match or improve upon their terms so as to render their proposal comparable to the priming DIP proposed by or on behalf of the CCAA debtor. Here, the Senior Secured Lenders have not been given any such opportunity.

37. *Tacora* and *Crystallex* are completely distinguishable from the present case. The Senior Secured Lenders offered DIP financing on comparable or better terms than the Proposed Priming DIP, without intrusive governance rights, last-look provisions, or any terms that would chill the restructuring process. Conversely, the Senior Secured Lenders have consistently demonstrated their willingness to engage constructively with the Company and the Monitor, including by increasing the size of the Interim Bridge DIP from $70 million to $110 million to accommodate the Company's own expressed liquidity requirements during the Bridge Period.

38. Notably, the Monitor's Second Report confirms that the final DIP proposal submitted by the Senior Secured Lenders constitutes a viable proposal.[23]

ii. The Senior Secured DIP Allows the Company to Operate and Causes the Least Amount of Change to the Status Quo

39. The Senior Secured DIP preserves the status quo and avoids prejudice to any party while litigation over the long-term DIP is conducted. The Senior Secured DIP carries no fees in the event it is repaid out of the proceeds of a replacement DIP facility, rendering it entirely without prejudice to the Company, the Monitor, or any other stakeholder, while stabilizing and funding the Company's continued ordinary-course activity.

40. In circumstances where the Company seeks approval of an unprecedented priming DIP facility of this magnitude, and where the First Secured Lenders have been afforded no meaningful opportunity to review the materials, conduct cross-examinations, or file full and comprehensive

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[23] Second Report of Monitor dated June 4, 2026, at para 49.

responding evidence, the appropriate action is to adjourn the Applicants' motion, order a litigation timetable that affords all parties their procedural rights, and authorize the Applicants to borrow under the Senior Secured DIP if needed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of June, 2026.

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60

2. *Crystallex International Corporation, Re*, 2012 ONCA 404

3. *Crystallex International Corporation, Re*, 2012 ONSC 2125

4. *Fire & Flower Holdings Corp., Re,* 2023 ONSC 4048

5. *Great Basin Gold Ltd., Re*, 2012 BCSC 1459

6. *Mizrahi Development Group (The One)*, (April 22, 2025), Ontario Superior Court of Justice [Commercial List] Court File No. CV-25-00740512-00CL, (Initial Order).

7. *Port Capital Development (EV) Inc. (Re)*, 2022 BCSC 1655

8. *Quest University Canada (Re)*, 2020 BCSC 318

9. *Revlon, Inc. et al*, (June 20, 2022), Ontario Superior Court of Justice [Commercial List], Court File No. CV-22-00682880-00CL, (Supplemental Order (Foreign Main Proceeding

10. *Tacora Resources Inc. (Re)*, 2023 ONSC 6126

11. *Target Canada Co., Re*, 2016 ONSC 316

12. *Temple City Housing Inc., Re*, 2007 ABQB 786

I certify that I am satisfied as to the authenticity of every authority.

Date June 5, 2026

B.Ketwaroo
Signature

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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PROCEEDING COMMENCED AT TORONTO

FACTUM

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Daniel Murdoch (LSO #53123L)
Tel: 416-869-5529
Email: dmurdoch@stikeman.com

Maria Konyukhova (LSO #52880V)
Tel: 416-869-5230
Email: mkonyukhova@stikeman.com

Philip Yang (LSO #82084O)
Tel: 416-869-5593
Email: pyang@stikeman.com

Brittney Ketwaroo (LSO #89781K)
Tel: 416-869-5524
Email: bketwaroo@stikeman.com

Counsel for Oaktree Capital Management, L.P. and Hartree Partners, LP